

## AMS/FAST CHANGE REQUEST (CR) COVERSHEET

**Change Request Number:** 17-72

**Date Received:** 9/12/17

**Title:** Delegation - Ratification Official correction

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**Initiator Name:** Joshua Fletcher

**Initiator Organization Name / Routing Code:** Policy Procurement Branch/AAP-110

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**Policy and Guidance:** (check all that apply)

- ☐ Policy
- ☒ Procurement Guidance
- ☐ Real Estate Guidance
- ☐ Other Guidance
- ☐ Non-AMS Changes

**Summary of Change:** Deleted the ratification official at the Mike Monroney Aeronautical Center

**Reason for Change:** Correction to guidance in accordance with the only Ratification Official being the Chief of Contracting at HQ.

**Development, Review, and Concurrence:** AAQ-1, AAQ-2, AAP-100, AAP120

**Target Audience:** Acquisition Workforce

**Briefing Planned:** No.

**ASAG Responsibilities:** None.

**Section / Text Location:** T3.1.4 Delegations

**The redline version must be a comparison with the current published FAST version.**

- ☒ I confirm I used the latest published version to create this change / redline
- or**
- ☐ This is new content

**Links:** <http://fast.faa.gov/docs/procurementGuidance/guidanceT3.1.4.pdf>

**Attachments:** Redline and Final

**Other Files:** N/A.

**Redline(s):**

**Section Revised: 3.1.4 A 6 – Ratification of Unauthorized Commitments**

**Procurement Guidance - (~~7/2017~~ 10/2017)**

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T3.1.4 Delegations Revised 7/2009

A Authority, Delegation, and Unauthorized Commitments Revised 1/2017

1 Delegated Authority Revised 1/2017

2 COCO Responsibilities Revised 1/2017

3 1102 Series Certification Revised 1/2017

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5 Procurement Authority Delegated to Other Qualified Individuals Revised 1/2017

6 Ratification of Unauthorized Commitments Revised ~~1/2017~~ 10/2017

B Clauses Revised 7/2010

C Forms Revised 7/2010

D Appendix Added 1/2011

1 1102 Series Warrant Standards Revised 1/2017

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### **T3.1.4 Delegations** Revised 7/2009

#### **A Authority, Delegation, and Unauthorized Commitments** Revised 1/2017

##### **1 Delegated Authority** Revised 1/2017

a. *Delegation.* The Administrator has authority to enter into contracts, leases, grants, cooperative agreements, and other transactions. Except for Airport Improvement Grants (AIP), the Administrator has delegated authority for managing these functions to the FAA Acquisition Executive (FAE). Based on the Administrator's delegation, the FAE has authority to appoint, and redelegate authority to, the Chief(s) of the Contracting Office (COCO), Contracting Officers (CO) and qualified non-contracting personnel. Except for the Purchase Card program, these delegations cannot be redelegated.

b. *Administrator's Review.* The Administrator must be notified and given time to review any non-Airport Improvement Program (AIP) grant, cooperative agreement, or other transaction not defined in AMS with a cumulative value of \$10 million or more, or with significant Congressional interest. (See AMS Procurement Guidance T3.8.1 Agreements, Cooperative Agreements, Gifts & Bequests, for additional information).

c. *Authority Granted.* Any delegation of authority must be in writing and state the authority and limitations it conveys. If authority is not included in the delegation, then that authority does not exist.

d. *Basis for Delegation.* Before delegating authority, the FAE considers the following:

- (1) There must be a demonstrated need for the authority;
- (2) The delegation level must be commensurate with the need in terms of dollar value complexity and mission criticality;
- (3) The individual must meet the qualifications and certification standards for the authority. However, an individual's qualifications, without a demonstrated need for the authority, are not sufficient reason to grant authority; and
- (4) Other factors, such as organizational structure, total volume of the actions, complexity and dollar value of the work involved, and aggregate value of the anticipated actions that the individual will be processing.

e. *Purchase Card Delegation.* The FAE's approval is not required for individual Delegations of Procurement Authority (DPA) for the purchase card program. Procurement Guidance T3.2.6 Purchase Card Program addresses purchase card delegations.

f. *Delegation Records.* The FAE will provide a copy of all delegations of authority and any modifications, terminations/rescissions, or waivers to delegations to the COCO and the Acquisition Career Manager (ACM). The ACM will be the official record keeper for all delegations and maintain copies.

g. *Rescinding Delegation*. Except for the purchase card program and delegated authorities which are automatically rescinded due to the individual leaving the Acquisition and Contracting organization or receiving a new warrant, only the FAE may rescind a CO warrant or other procurement authority. Unless the delegation provided for automatic rescission, the rescission is to be by letter and state the general reason for rescission and the effective date. When a delegated authority is rescinded before its automatic rescission date or when there is no automatic rescission date, the written notice to the individual should provide enough time to ensure the individual does not make any unauthorized commitments.

Upon notification of the rescission, the original warrant or certificate of appointment is annotated as "rescinded". Reasons for rescission may include:

- (1) The need for the delegated authority no longer exists, for example, lack of a demonstrated need, retirement, resignation, termination of employment, issuance of a new warrant, or an assignment to another position.
- (2) Failure to comply with applicable requirements, limitations, policies, regulations, statutes, or delegated responsibilities;
- (3) Maintenance training/certification requirements have not been met, or failure to maintain all standards after appointment; or
- (4) Violation of a material portion of the ethics guidance for Federal employees and/or standards of conduct for Department of Transportation employees.

h. *Changes in Authority*. When the FAE modifies delegated authority, it must be in writing and delivered to the individual with sufficient advance notice and instructions to ensure that the individual does not make unauthorized commitments. Any increase or decrease in the dollar value or scope of an individual's authority requires issuing a new certificate of appointment or warrant and rescission of the previous delegated authority.

i. *Waivers*. The FAE may waive qualification and certification standards if circumstances clearly dictate need for delegation of authority, even though the employee does not fully meet required standards. Such a waiver is conditional, identifies duration, and must state the requirements that the individual must satisfy to become fully qualified.

## **2 COCO Responsibilities** Revised 1/2017

a. The COCO is a position designated by the FAE that is delegated unlimited authority for procurement contract award and administration, leases, real estate transactions, cooperative agreements, non-Airport Improvement (AIP) grants, other agreements, and other transactions. The COCO, acting within the scope of the FAE's delegation, manages day-to-day contracting functions for FAA.

b. Specific responsibilities of the COCO include:

(1) *Review/Approve Qualifications.* The COCO reviews and approves qualifications of personnel such as education, training, knowledge, and experience, being considered for appointment as a CO or for other types of procurement authority.

(2) *Delegate Authority.* Except for delegations made pursuant to the purchase card program, the COCO formally requests delegation of authority in writing to the FAE.

(3) *Periodic Review.* The COCO, with the appropriate managers, periodically reviews delegations to validate that the delegations remain appropriate and needed, reviews individual's continuous learning to ensure requirements are being met, and periodically examines procurement actions to ensure authorized individuals do not exceed their delegated authority. All Level I and II warrants will be reviewed at least annually and Level III warrants will be reviewed at least every two years.

### **3 1102 Series Certification** Revised 1/2017

Individuals must meet training, education, and experience requirements to qualify for an 1102 job series position. AMS Policy Section 5, Acquisition Career Program, outlines certification requirements for personnel once in the 1102 series.

### **4 Contracting Officer Certificates of Appointment/Warrants (1102 Series)** Revised 1/2017

a. *Limitations.* Warrants define the dollar and scope limitations of the authority. Warrants may be limited or unlimited. A limited warrant states a total dollar limitation for each transaction. The dollar value of a transaction includes the base year and all options and ceiling amounts, as defined by "total estimated potential value" in Appendix C of AMS policy. An unlimited warrant allows transactions at any dollar value. In addition to the dollar value, limited and unlimited warrants must expressly state any limitations of authority (other than limitations in applicable laws or regulations) and the specific types of transactions the CO is authorized to make.

b. *Warrant Levels.* The determination of warrant levels must be based on a demonstrated mission need for the authority. These warrant levels do not apply to purchase card delegations. Individuals must meet the training, education, and experience requirements for certification as outlined in AMS Policy Section 5, Acquisition Career Program, to qualify for a warrant unless the FAE grants a waiver in accordance with Section 1.i.

c. *Procedures for Obtaining Certificate of Appointment (Warrant).*

(1) The request for a certificate of appointment/warrant is prepared on a "Contracting Officer Warrant Request" (see AMS Procurement Forms) by the Contracting Specialist's manager.

The manager ensures that there is a mission need; the individual meets the applicable training, education, certification and experience requirements commensurate with the proposed delegated

threshold prior to forwarding the warrant request to the COCO and Acquisition Career Manager (ACM). A sample of the warrant request and instructions are available on the Acquisition Career Manager website.

(2) The ACM and COCO review the request and supporting documentation for completeness and evaluates the applicant's acquisition experience, training, and evidence of certification.

(3) The certificate of appointment must include a warrant number, dollar limit of warrant authority, and any other applicable limitations, such as restrictions to certain types of transactions. If approved, the FAE signs the delegation and returns it to the ACM for distribution.

d. *Displaying Warrant and Other Certificate of Appointment.* COs must prominently display the original warrant or other certificate of appointment so that information about their authority and any limitations is readily available to the public and FAA personnel.

e. *Skills Currency/Continuous Learning.* To maintain the delegated authority, individuals must maintain appropriate 1102 series certification level. Acquisition professionals must earn 80 continuous learning points (CLP) of skills currency training every two years. COCOs monitor continuous learning requirements for individuals' delegated authority. If an individual does not earn 80 CLPs every two years, the FAE may rescind or modify the warrant or certificate of appointment to decrease the dollar and/or specific type of transaction authority.

## **5 Procurement Authority Delegated to Other Qualified Individuals** Revised 1/2017

a. *General.* The FAE may delegate a limited form of procurement authority to qualified individuals who are not warranted COs. This limited authority may be granted to individuals within or outside of the contracting office when supported by a demonstrated need. The FAE evaluates the request and delegates authority to the individual needing the authority. The delegation must be in writing and state specific limitations governing the limited authority, such as dollar thresholds or types of procurement (i.e. supplies, services, construction, etc.). Guidance in this section does not apply to delegations under the purchase card program, which is addressed in AMS Procurement Guidance T3.2.6, Purchase Card Program.

b. *Redelegation.* Individuals delegated procurement authority from the FAE under this subsection cannot redelegate that authority.

c. *Delegation of Procurement Authority (DPA).* A DPA may be granted to non-1102s by the FAE through a written request. This form of delegation authorizes the individual to legally bind FAA and delegates specific authority related to the dollar threshold and types of procurements (not related to the purchase card program). This procurement authority cannot be further delegated, and personnel cannot "sign for" or over someone else holding procurement authority.

d. *Delegation of Reimbursable Agreement Authority (DRAA).* For Small Scale Reimbursable Agreements (SSRAs) with a value of less than \$30,000, a DRAA may be granted to qualified non-1102s by the FAE through a written request. This delegation does not allow the individual to

obligate funds nor is certification required. This authority cannot be further delegated, and personnel cannot “sign for” or “sign over” another's authority.

e. *Limitations.* All DPAs define the dollar and scope limitations of the authority granted by the FAE. All limitations based on dollar thresholds must ensure the dollar value of a transaction includes the base year and all options, as defined by "total estimated potential value" in Appendix C of AMS policy. In addition to the dollar value, a DPA must expressly state any limitations of authority (other than limitations in applicable laws or regulations) and state the specific types of transactions the non-1102 is authorized to make (e.g. other transaction agreements, reimbursable agreements, construction, services and/or supplies, etc.).

f. *Displaying the DPA and DRAA.* Personnel must prominently display any delegation to make information on the authority and any limitations readily available to the public and FAA personnel.

g. A sample of a delegation request and instructions is at the Acquisition Career Manager website.

## **6 Ratification of Unauthorized Commitments** Revised 1/201210/2017

### **a. General.**

(1) *Contracting Authority.* Only a CO and other qualified individual delegated procurement authority, acting within the scope of his or her delegated authority, may enter into contracts, leases, or other agreements and may obligate funds on behalf of the Government.

(2) *Unauthorized Commitments.* A contract, lease, order, or agreement made by an FAA employee, other than a CO and other authorized person, is not binding because the person who made the agreement lacked the authority to commit the Government. An employee without proper authority who commits the Government is acting improperly. The employee will be held accountable and may be disciplined according to Federal Aviation Personnel Manual (FAPM) Letter 2635 and Human Resources Policy Manual (HRPM) ER-4.1, as applicable.

(3) *Organizational Responsibility.* FAA organizations must make every effort to prevent unauthorized commitments. Unauthorized commitments are serious acts of misconduct. Supervisors and managers must ensure each employee is aware of policy and procedures related to unauthorized commitments and conduct and discipline rules for unauthorized commitments in FAPM Letter 2635 and ER-4.1.

(4) *Ratification.* Although FAA's policy is to avoid unauthorized commitments, under certain approved circumstances such commitments may be ratified using the procedures in this section and converted into a legal contract.

(5) *Ratifying Official.* The Director of Acquisition and Contracting at Washington Headquarters has authority to ratify unauthorized commitments. ~~This authority is also delegated to the Director of the Mike Monroney Aeronautical Center for unauthorized~~



~~commitments at the Aeronautical Center.~~ This ratifying authority cannot be delegated below ~~these positions or to other positions~~this position.

(6) *Local Implementation.* All FAA organizations must follow the procedures in this section. Contracting offices and other organizations may issue additional implementing procedures if they do not contradict the procedures in this section.

b. *Procedures for Ratification.* When an organization discovers an unauthorized commitment, the organization must take immediate action to ratify the commitment and have the cognizant procurement office convert it to a legal transaction. Procedures for ratification are:

(1) The supervisor/manager, assisted by the person who committed the unauthorized act, prepares a memorandum of facts containing the following information:

- (a) A detailed description of the circumstances that caused the unauthorized commitment;
- (b) Reasons why normal procurement procedures were not followed;
- (c) A description of the bona fide Government need that required the commitment;
- (d) A statement about the benefit to FAA from acquiring the unauthorized supplies or services received;
- (e) The dollar value of the commitment;
- (f) Rationale for the contractor selected and identification of other sources considered;
- (g) The name of the individual who made the unauthorized act;
- (h) A statement about the disciplinary action taken to preclude the situation from recurring;
- (i) A specific recommendation that the transaction be approved and ratified;
- (j) A determination that funds are now available and were available at the time the unauthorized commitment was made; and
- (k) Any other pertinent facts including invoices, receiving reports, or other evidence concerning the transaction.

(2) Evidence of available funding should be attached to the memorandum.

(3) The memorandum of facts is signed by the employee who made the unauthorized commitment, and endorsed by the supervisor/manager. By signing the memorandum, the employee attests that the information is accurate and complete. If the employee has separated from FAA, then the organization having access to information about the unauthorized

commitment prepares the memorandum and the former employee's supervisor/manager signs it.

(4) Legal review and concurrence is obtained before submitting the memorandum to the ratifying official.

(5) After legal concurrence, the memorandum along with the applicable procurement request (PR) is transmitted to the cognizant procurement office for ratification action.

(6) When the procurement office receives a PR and a properly documented supporting memorandum, the CO makes a written determination, as described below, and forwards the ratification action to the ratifying official.

(a) *CO Determination.* Before recommending approval of a ratification and as a part of the CO's review and determination, the CO:

- (i) Determines the price to be fair and reasonable;
- (ii) Recommends that payment be made;
- (iii) Determines that the settlement of the unauthorized commitment would not involve a contract dispute subject to AMS Policy 3.9;
- (iv) Determines that the purchase would have been authorized had the purchaser followed established procedures.

(b) If an affirmative determination can be made in all areas of subparagraph (a) above, the CO prepares a memorandum to the ratifying official with the following information:

- (i) A brief description of the unauthorized commitment;
  - (ii) A statement that prices are fair and reasonable;
  - (iii) A statement recommending approval of the unauthorized commitment;
- and
- (iv) A copy of all supporting documentation.

(c) If the CO, after legal concurrence, is unable to make an affirmative determination in all areas of subparagraph (a) above, the memorandum to the ratifying official states the CO's reasons that an affirmative determination cannot be made, recommends that the action not be ratified, and offers an alternative solution to resolving the unauthorized commitment.

*c. Notice of Infractions.*

(1) An unauthorized commitment made by an individual is considered a first infraction.

(2) Upon receipt of a request for ratification from an organization, the cognizant division manager of the contracting office forwards a notice of infraction to the next level manager/supervisor above the supervisor/manager who signed the memorandum of facts. The notice advises the second level manager/supervisor that the action violates Federal law and FAA policy and guidance; reminds him or her of the proper procurement process; offers to provide written material or mini-training sessions (when possible) to orient the organization to the procurement process; requests every effort be made to avoid future violations; and, when appropriate, requests the widest possible distribution of the notice within the organization.

*d. Disciplinary Actions for Making Unauthorized Commitments.*

(1) Individuals who make unauthorized commitments, and their immediate supervisor are subject to possible disciplinary actions. The recommended levels of disciplinary penalties for staff, managers, and supervisors are contained FAPM Letter 2635 and ER-4.1.

(2) Any unauthorized commitment made by a non-manager/supervisor with the approval of his or her manager/supervisor is an infraction against the manager/supervisor and not the non-manager/supervisor.

(3) The period of accumulation for the above-mentioned infractions by staff, managers, and/or supervisors is five years.

*e. Avoiding Ratification.*

(1) When individuals who have not been delegated procurement authority need products or services, or when individuals with delegated procurement authority need products or services estimated to exceed their delegated authority, they must consult with the procurement office for support and guidance to avoid unauthorized commitments.

(2) An unauthorized commitment occurs when someone, other than a CO or other authorized individual, enters into an agreement on behalf of the Government but does not have authority to do so or to obligate the Government.

(3) To avoid a ratification action, an office requiring products or services must ensure that its employees are familiar with the procurement process and are aware of the consequences of unauthorized commitments.

(4) Individuals who have not been delegated procurement authority and who need supplies or services must contact either the person within their organization who has delegated procurement authority or the cognizant procurement office for assistance. The following are examples of types of procurement and areas of the procurement process that may involve individuals outside of the procurement offices, and circumstances in which procurement authority may be delegated to individuals other than a CO. (For more information about procurement methods generally used

by individuals outside of the procurement office, see AMS Procurement Guidance T3.2.2.5, Commercial and Simplified Purchase Method.)

- (a) *Government Purchase Card*. FAA employees may be delegated authority to procure supplies and services using the Government purchase card.
- (b) *Blanket Purchase Agreement (BPA)*. A procurement vehicle, awarded by a CO, for ordering supplies or services that may authorize other specific individuals to order supplies or services from the vendor.
- (c) *Purchase Card Check*. FAA employees delegated purchase authority may use purchase card checks when a vendor does not accept the Government purchase card for on-the-spot, over-the-counter purchases of supplies and services.
- (5) *Existing Contracts*. Contracting Officer Representatives, resident engineers, etc., must be careful not to direct a contractor to perform any task that would result in a change to the cost, schedule, or scope of the contract, unless such action is authorized by the CO. It is easy through conversation and during the normal daily interaction with the contractor to inadvertently direct the contractor to perform tasks that result in cost or schedule impact. If such direction is given without the delegated authority, or the express authorization of the CO, the result is an unauthorized commitment.
- (6) *Contract Renewals*. Contracts awarded for a base period of performance plus options means that the Government is only committed for the base period. Each option period requires a contract modification before the beginning of the option period to authorize continued performance. Performance following the initial contract period must not begin until the contract has been properly modified to authorize continued performance. The requiring office is responsible for requesting a contract modification to exercise options and for providing the funds to continue performance. Individuals who serve as the Government's point of contact on a contract with option provisions should be familiar with the contract terms. Placing an order or directing tasks against an expired contract results in an unauthorized commitment. Before the beginning of the option year, if a modification has not been received to extend the contract period, the CO should be contacted for guidance before placing any orders or directing any tasks for that option period.
- (7) *Examples*. The following are examples of areas where unauthorized commitments are commonly made:
  - (a) *Acquiring Conference Space*. After the request for conference space has been coordinated through the local real property office, the requiring office may discuss the requirement with the vendor/hotel to ensure the appropriate accommodations are available. However, the space should not be utilized until the transaction has been approved and an agreement signed by a person with the appropriate procurement authority.
  - (b) *Training*. Request for training should be submitted to the procurement office in time to enable the requirement to be processed sufficiently in advance of the beginning of the course.
  - (c) *Professional Speakers or Arbitration Services*. The requiring organization may identify the appropriate speakers or arbitrators and have discussions to ensure the Government's needs will be met. However, the requiring office should not enter into any oral or written agreements on behalf of the Government unless the person making the agreement has the delegated authority to do so. If the requiring office does not have an individual with the delegated authority to enter into an agreement, the request should be submitted to the contracting office for processing.

f. *Exceptions to Infractions.*

(1) In cases of extreme emergencies, such as floods, fires, tornadoes, earthquakes and hurricanes, or emergencies that may have an immediate impact on the safety of the flying public, an individual may need to obligate the Government's funds to preserve life and property. In these instances, if possible, the individual should contact the cognizant procurement office and request that a CO verbally authorize the contractor to proceed according to emergency procedures outlined in AMS policy 3.2.2.4.1.1.

(2) When the conditions outlined above occur, and the CO was not contacted to give a verbal authorization, the memorandum of fact documents the circumstances. The memorandum includes a statement that the person who made the unauthorized commitment is exempt from the requirement for disciplinary action.

g. *Waiving Disciplinary Action.* The ratifying official may waive disciplinary action. The ratifying official must justify in writing why the unauthorized act does not warrant discipline.

h. *Definitions.*

(1) "Ratification" is an act of approving an unauthorized commitment by an official who has the authority to do so.

(2) "Unauthorized commitment" is an agreement entered into by a representative of the Government who does not have the authority to enter into agreements on behalf of the Government.

**B Clauses** Revised 7/2010

[view contract clauses](#)

**C Forms** Revised 7/2010

[view procurement forms](#)

**D Appendix** Added 1/2011

**1 1102 Series Warrant Standards** Revised 1/2017

	Threshold Limit	Minimum FAA Certification Level
\$150,000		Level I
	\$1,000,000	Level II
\$5,000,000		Level II
	\$10,000,000	Level II
	\$50,000,000	Level III
Unlimited		Level III